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# NGT and patents: the EU has chosen to ignore the US precedent

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Publié le 23/09/2026

New genetic modification techniques (NGTs) are presented by their proponents as a mean of promoting innovation in seed production and broadening farmers' choices. However, the US experience shows that deregulating GMOs is not enough to make them accessible to users. According to a 2023 report by the US Department of Agriculture, the significant increase in patent fees on GMOs is hindering access to seeds in general. Europe, which has just adopted its regulation on GMOs produced using NGTs, arguing that it is necessary to boost variety innovation, was nevertheless aware of this report on the situation in the US.

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The debate on GMOs produced using NGTs was often reduced to the question of whether or not they should be subject to the rules applicable to GMOs. But behind this question – to which the Court of Justice of the European Union (CJEU) had answered "*yes*" in 2018 and 2023 – lay the issue of access to these techniques for companies that have the desire and the means to implement them. Above all, the impact of patents relating to these techniques and their products continues to raise questions regarding the potential appropriation of seeds and living organisms in general. Indeed, whilst NGTs are presented by their proponents as a driver of innovation and plant variety development, their deregulation does not bring the debate on patents to a close. This is a problem the United States has been facing since at least 2023, as its own Department of Agriculture (USDA) warned in a report on the effects of patents on competition and access to seeds1.

## In the United States, patents complicate access to seeds

The aim of this USDA report is to *"promote fair competition and innovation in the field of seeds and other agricultural inputs*". The document advocates striking a balance between intellectual property protection, innovation and maintaining sufficient competition. It therefore recommends strengthening public research and seed diversity to ensure a *"more resilient"* US agricultural sector. However, the report identifies intellectual property as one of the factors that can affect competition.

A notable account provided by the USDA, highlighting anti-competitive practices, comes from the Independent Professional Seed Association (IPSA). This representative of US seed producers criticises the conditions imposed for obtaining a licence for patented traits and plants2 : *"companies like ours must provide a multinational corporation with a list of all our customers, (complete with addresses), the amount of seed purchased by product for each customer, as well as our complete company financials. After giving them all our company information, we need to try to compete against their company and owned brands*". In its report, the USDA thus demonstrates that there are situations where patent holders require the disclosure of sensitive commercial information in order to grant licensing rights, and that such practices create a relationship of dependency for small and medium-sized enterprises towards multinationals. Furthermore, whilst this report is limited to the plant sector, there is no reason to believe that its conclusions cannot also be applied to the animal sector.

This issue of dependency is not limited to the cost of accessing patented technologies and products, which includes, in particular, royalties on sales made by licencees, and sometimes *"entry fees*" (a fixed sum dependent on several parameters, such as the technical field, the exclusivity of the rights, etc.), and milestone payments (upon reaching a regulatory or development milestone, or in the patent application process, etc.). Intellectual property in general, and patents in particular, confer real market power and increase the concentration of the seed sector in the hands of a few multinationals holding large patent portfolios3. This problem affects the US seed sector as a whole. What has been the situation since the NGTs introduced new intellectual property rights?

## Same causes and (likely) the same effects in the EU

The specific case of NGTs, which have recently been deregulated in the EU, is no exception to the general problem identified by the USDA in its report. In Europe, patents relating to NGTs began to be applied for and granted nearly fifteen years ago and now number in the tens of thousands. The vast number of patents granted for so-called "*directed mutagenesis*" techniques or tools such as CRISPR-Cas9, and their applications, bear witness to this. These techniques and tools have not led to a fundamental break with the existing patent system, as the examination of patent

applications is carried out in a manner equivalent to that applied to GMOs produced up to that point [4]. Regulations on patents and GMOs (biosafety) are in fact distinct and, whilst they overlap to some extent, they do not cover exactly the same techniques and products. The deregulation of NGTs actually encourages breeders with the necessary resources to file a large number of patent applications in order to cover the associated developments as broadly as possible.

In this regard, a note from the French Embassy in the United States, dated March 2026, sets out its observations regarding the commercialisation of GMOs/NGTs, and explains how the abundance of patents in the US plays a major role in this[5]. Despite more than 140 authorisations, only a handful of GMO/NGT plants are on the market, largely due to patent-related issues, according to the embassy. This discrepancy stems primarily from the proliferation of patents covering products whose development remains too uncertain and processes that have not yet been developed, which are intended to stifle competition. The note also rightly highlights that the majority of patents relating to CRISPR/Cas9, methods of use and the resulting characteristics are concentrated in the hands of a few major players. Licences can thus become a veritable *"access toll*" to NGTs, and small and medium-sized enterprises become legally and financially dependent on patent holders. This situation in the US contrasts with the promises made by multinationals and the European Commission regarding the deregulation of NGTs.

What might therefore seem paradoxical – deregulating a product ultimately limits access to that product – is in reality not so. Whilst patents are often presented as a powerful driver of liberalisation in an economic sector, this liberalisation primarily benefits those best placed to take control of that sector, thereby making access particularly difficult for other players. Thus, the "*liberalisation*" of GMOs derived from NGTs in the EU makes them very difficult to access not only for interested players who do not hold the patents, but also – due to the effect of patents – for players in non-GMO sectors[6]. If these difficulties had already been documented in the United States, why has the EU not taken them fully into account and incorporated them into the development of the regulatory framework for NGTs?

## The new regulation does not depart from the US model

In a communication dated 23 April 2026[7] following the adoption at first reading of the regulation on NGTs, the Commission reaffirmed that it was *“fully committed to protecting the functioning of the internal market and the plant breeding sector, in particular small and medium-sized enterprises (SMEs)*”. It reiterated some of its commitments regarding patents, notably that it *“will oversee the drawing up of a code of* conduct”, *“will assess the functioning of licensing platforms and their use by the seed sector, to ensure transparency on patents and facilitated access to licences for SMEs under fair and reasonable conditions*" and "*will ensure that SMEs have access to support and guidance on patent matters relating to plants, in order to balance the relations between different players in the plant breeding market*". These commitments by the Commission are accompanied by tools (such as a Code of Conduct) and procedures (such as the obligation – which will not be subject to any verification – to declare to the competent authorities patents relating to GMOs/NGT1 and the possibilities for obtaining licence agreements), which were adopted, amongst other measures, in December 2025 by the Council of the EU. However, these measures are in no way binding on patent holders and do not take into account the impacts on farmers and small and medium-sized breeders [viii] .

Available prior to the adoption of the NGT Regulation in June 2026, the feedback provided by the USDA report and by the note to the French Embassy warning of patent-related difficulties could have prompted the European legislator to establish an appropriate legal framework for NGTs. Whilst the adopted regulation does contain a few *"safeguards*" (unverified transparency regarding

relevant patents, information on *"fair and reasonable*" licences, future impact assessments and the creation of an expert group…), these provisions raise doubts as to whether their implementation, effectiveness and/or enforceability can be guaranteed, since they are neither mandatory nor binding. Thus, whilst acknowledging the problems associated with patents in the United States, the regulation on NGTs does not provide for clear, robust and mandatory tools and procedures to prevent them.

## Deregulation versus economic freedom

Even if the Commission were to fulfil its various promises and commitments, questions remain unresolved on a number of points. For example, if an entity identifies one or more patents to which it can only gain access under licence, it must still be able to access the contractual terms of that licence. Furthermore, this unverified transparency vis-à-vis the competent authorities alone will not be sufficient to prevent relationships of dependency between multinationals and small and medium-sized breeders and farmers.

The general problem posed by patents – which was the subject of numerous warnings from the European legislator before it chose to adopt the deregulation of GMOs and NGTs – is clearly illustrated by the US experience. The EU will not necessarily replicate the US model, but it will not be able to claim that "*it did not know*", as the facts were and are well documented.

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- + USDA, "More and Better Choices for Farmers: Promoting Fair Competition and Innovation in Seeds and Other Agricultural Inputs", March 2023.
- + In Europe, unlike in the United States, plant varieties as such are not patentable, but a claim that is not limited to a specific variety – relating, for example, to genetic information, a gene, or a plant defined by a technical characteristic rather than by its varietal identity – remains patentable.
- + Denis Meshaka, "NGT Regulation: is Europe heading for a rise in seed prices?", *Inf'OGM*, 26 August 2026.
- + Guidelines for Examination at the European Patent Office, Part G, Chapter II, 5.4
- + Eric Meunier, "GMOs/NGT: a memo from the French Embassy in the United States ignored by the government", *Inf'OGM*, 1st June 2026.
- + Denis Meshaka, "NGT Regulation: is Europe heading for a rise in seed prices?", *Inf'OGM*, 26 August 2026.
- + European Commission, "COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on a Regulation of the European Parliament and of the Council on plants obtained by certain new genomic techniques and their food and feed, and amending Regulation (EU) 2017/625", 23 April 2026.

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